

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: BAIR HUGGER FORCED AIR
WARMING DEVICES PRODUCTS
LIABILITY LITIGATION

MDL No. 15-2666 (JNE/FLN)

ORDER

Monica Davies, for Defendants.

THIS MATTER came before the undersigned United States Magistrate Judge on June 25, 2018, on Defendants’ motion for a protective order (ECF No. 1299). Plaintiffs have not responded to the instant motion and the period to do so has now passed. *See* L. R. D. Minn. 7.1(b)(2).

On June 20, 2018, Plaintiffs noticed the deposition of W.J. Minkowycz, Ph.D., for July 20, 2018, in Chicago, Illinois, pursuant to Federal Rule of Civil Procedure 45(c); on the same day, Plaintiffs served a document subpoena on the University of St. Thomas, located in St. Paul, Minnesota, requesting document production of, *inter alia*, “[a]ll communications, including emails, between any St. Thomas University employee and 3M Corporation relating to the Computational Fluid Dynamics research of the Bair Hugger/FAW system in an operating room[,]” by July 5, 2018. ECF No. 1301, Exs. 1, 2. The University of St. Thomas is the employer of Defendants’ computational fluid dynamics expert, James Abraham, Ph.D. *See* ECF No. 1301, Ex. 1. Although Plaintiffs have not responded to the instant motion, they previously asserted that Minkowycz assisted Abraham’s publication of a 2017 article in *Numerical Heat Transfer: An International*

Journal of Computation and Methodology.¹ See ECF No. 1137 at 1. In the instant motion, “[p]ursuant to the Federal Rules of Civil Procedure 26(b)(4) and 26(c), and Local Rule 16.3 . . .” Defendants demand that Plaintiffs “withdraw their untimely and improper subpoenas to W.J. Minkowycz, Ph.D.[,] and the University of St. Thomas.” ECF No. 1299.

This is not Plaintiffs first attempt at deposing Minkowycz. On March 12, 2018, the Court entertained oral argument on Defendants’ motion for a protective order seeking to quash a deposition notice that Plaintiffs served on Minkowycz pursuant to Rule 45(c), on February 15, 2018. See ECF No. 1173. During the hearing on that motion, the Court concluded that, given that fact discovery had closed, “the state of the record is clear regarding the facts: J.P. Abraham’s 2017 article was published at the direction of the editor-in-chief of *Numerical Heat Transfer: An International Journal of Computation and Methodology* without further review or comment from others skilled in the field of computation fluid dynamics.” ECF No. 1168. Accordingly, the Court quashed Plaintiffs’ Rule 45(c) subpoena to depose Minkowycz. See *id.*

The record remains clear and is unchanged since the Minkowycz deposition matter was last heard. Specifically, the record and facts underlying Abraham’s 2017 article are clear. The time for fact discovery has closed and the issue of whether Minkowycz may be deposed has been decided. The Court finds no need to revisit those issues or permit broad third-party discovery at Abraham’s employer, the University of St. Thomas, regarding his 2017 article.

Based on the foregoing, and all of the files, records, and proceedings herein, and noting Plaintiffs lack of a response, **IT IS HEREBY ORDERED** that Defendants’ motion for a protective

1 Minkowycz is the Editor-and-Chief of *Numerical Heat Transfer: An International Journal of Computation and Methodology*. See ECF No. 1137 at 1.

order (ECF No. 1299) is **GRANTED**.

DATED: July 3, 2018

S/Franklin L. Noel

FRANKLIN L. NOEL
United States Magistrate Judge